IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Appeal No.759 of 2003

Dada Tukaram Mane — Appellante
Vs.
State of Maharashtra — Respondent

Mr.Abhaykumar Apte, Advocate appointed for appellant.

Ms.U.V.Kejriwal, APP for State.

CORAM: B.H.MARLAPALLE & R.S. MOHITE, JJ.

February 05, 2007.

ORAL JUDGMENT (PER B.H.MARLAPALLE,J.)

1. This appeal arises from the order of conviction and sentence passed by the learned IInd Addl. Sessions Judge at Baramati on 4/10/2002 and by the said order the appellant-accused came to be convicted for an offence punishable under Section 302 of IPC and sentenced to suffer imprisonment for life and to pay a fine of Rs.1000/-, in default of payment of fine the accused shall suffer further RI for six months. The accused was in pre-trial detention from 9/12/2000 and, therefore, he was entitled to set off under Section 428 of Cr.P.C.

2. As per the prosecution the accused, a resident of Chakati was married to Savitribai. They were a

joint family along with children. On 9/12/2000 at about 3.15 p.m. Rambhau Bapurao Mankad (PW 1) was loading manure in the cart and at that time Dattu Anna Ghodke approached him and told him that the accused had closed the door of his house by putting a latch from inside and the villagers were discussing that the accused had committed murder of his wife Savitribai. Rambhau and Dattu, therefore, proceeded towards the house of the accused and noticed that it was closed from inside. They gave a call to the accused but there was no response. Ramchandra therefore, went to the house of Dnyaneshwar Narayan Fadatare and from there a telephonic call was given to the outpost at Bawada and the police were informed that the accused and his wife were inside the house and that he was not opening the inner latch. As per the advice of the police Rambhau again came to the house of the accused and gave a call but there was no response. However, without opening the door the accused is claimed to have stated that he has committed the murder of his wife Savitribai. On this information Rambhau pleaded with the accused to open the door but in vain and, therefore, Rambhau proceeded towards the house of Dnyaneshwar at about 4 p.m. to inform the police for the second time. The

Head Constable Bhanudas Khandagale - PW 10 at outpost Bawada received the telephonic message and along with police Constable Dhanaji Omase reached Chakati village at about 4.30 p.m. on his motorbike. The distance between Chakati village and outpost Bawada is about 15 Kms. The police along with Rambhau and 25-30 villagers went to the house of the accused and gave a call to him and informed about their arrival. The accused slightly opened the door and on noticing that the police have arrived he opened the door and came out with a sickle in his hand which was blood stained. The police directed him to drop the koyta (sickle) from his hand and PW 10 Khandagale and PW 11 Omase immediately took the accused in custody on the spot. Thereafter they entered the house and saw that Savitribai was lying dead in a pool of blood. The police personnel claim that on enquiries with the accused he reportedly stated that on account of quarrel with his wife-Savitribai he had committed her murder by inflicting multiple blows with sickle on her head and neck. PW 10 and PW 11 with Rambhau Markad PW 1 took the accused to outpost Bawada and a complaint (Exh.22) at the behest of PW 1, was lodged against the accused. Arrest panchanama of the accused was drawn and again the police party came to

village Chakati at about 6.30 p.m. PW 21 Pandurang Waghmode also reached village Chakati and took over the investigation from PW 10. He visited the scene of offence on 9/12/2000 and prepared the inquest panchanama of the dead body of Savitribai between 6.30 to 7.30 p.m. in the presence of panchas Mohan Markad and Mrs.Tai Sarjerao Ghodke. The dead body was forwarded through constable Shinde for post-mortem to the Medical Officer Dr. Eknath Chandanshive PW 12 at the Rural Hospital at Indapur. Autopsy was conducted on 10/12/2000 between 11.30 a.m. to 11.45 a.m. Sickle as well as the clothes on the person of the accused which were seized by a panchanama were forwarded for chemical analysis and CA reports were received at Exhibits 54, 55 and 56. On completion of investigation charge-sheet was filed. Charge was framed on 26/11/2001 by the learned 2nd Addl. Sessions Judge at Baramati against the accused.

3. The prosecution examined in all 21 witnesses and almost all of them except the police personnel and the medical officer turned hostile. The prosecution case as accepted by the trial Court is thus based on the circumstantial evidence of PW 10

Shri Bhanudas Khandagale, PW 11 Shri Dhanaji Omase, PW 21 Pandurang Waghmode and PW 12 Dr. Eknath Chandanshive and supported by the CA reports. PW 1 Rambhau admitted the incident regarding the murder of Savitribai. At about 6 p.m. Head Constable Khandagale PW 10 had come to his house and along with him he had gone to outpost Bawada. He had also signed on a paper at the police station but did not know why his signature was obtained. He admitted that the complaint shown to him bore his signature and that he was in the police station for about 10 to 15 minutes. He was declared hostile by the learned APP and was subjected to cross-examination during which he denied everything including filing of the complaint with the police outpost at Bawada. PW 2 Tukaram Gaikwad admitted to have signed on the panchanama at two places but again turned hostile. PW 3 Mohan Markad stated that on 10/12/2000 the police had visited village Chakati. He was called at the house of the accused and had seen the dead body of Savitribai lying inside the house in the pool of blood but he denied that anything was seized in his presence from the house of the accused. He was also declared hostile. PW 4 Shivaji Jadhav also stated that he was called by the police at the house of the

accused and dead body of Savitribai was found lying in the pool of blood. However, except the dead body he had not seen anything else. He was declared hostile. PW 6 Ganisha Bagade is the elder daughter of the accused and PW 9 Anna Mane is the son of the accused. Both of them turned hostile. It is, therefore, necessary to scan the evidence of PW 10, PW 11, PW 12 Dr.Ekanath Chandanshive and PW 21, the Investigating Officer. PW 12 Dr. Eknath Chandanshive admitted to have conducted the post mortem on the dead body brought to the Rural Hospital by Police Constable Shinde on 9/12/2000 and the post mortem was conducted on the next day between 11.30 a.m. to 11.45 a.m. On external examination he found the following injuries:

(a) Incised wound over left side of neck of 10 cm. x 3 cm. to muscles vessle deep. Vessle and muscles are also cut through, clotted blood.

(b) Incised wound 2 cm. below above injury, 3 cm. x 2 cm. muscles and vessels deep, clotted blood.

(c) Incised wound over fronto parital region 8 cm. x 2 cm. x 2 cm. scull deep, clotted blood.

(d) Incised wound over right parital region, 3 in numbers, one of them 7 cm. x 2 cm. x bone deep, brain matter oozing through it, clotted blood. (ii) 6 cm. x 2 cm. bone deep, brain matter oozing through it, clotted blood. (iii) 7 cm. x 2 cm. bone deep, brain matter oozing through it. (iv) fractured parital bone, clotted blood.

All the injuries were ante mortem. On internal examination he noticed that all organs were pale, heart was empty. On internal examination of brain he noticed laceration of brain (parital lobe) and internal haemorrhage. As per him the cause of death was "extensive haemorrhage due to cut through injuries to neck vessels and laceration of brain (parital lobe)". He stated that P.M. report at Exhibit 27 was written by him in his own handwriting and contents therein were true and correct. It bore

his signature. He also stated that all the injuries mentioned in column no.17 in Exhibit 27 collectively in the ordinary course of nature were sufficient to cause death and the incised wounds mentioned in column no.17 were possible by sickle (koyta) shown to him in the Court. Thus the P.M. report, therefore, proved that Savitribai died a homicidal death.

4. We are, therefore, required to examine whether the accused had committed the murder of his wife Savitribai and during the trial he had taken the plea of alibi viz. at about 11 a.m. on 9/12/2000 he had gone to the land of Bhimrao Markad to work as a labourer and in the evening around 4.30 p.m. a person approached him and told him someone was beating his wife in his house, he immediately reached home and saw the dead body of his wife in his house, he lifted his wife and in that course his clothes were blood stained, police immediately took him in custody. However the accused did not adduce any evidence to prove his plea of alibi i.e. he was not available in his house when the incident had taken place and he was somewhere else i.e. in the farm of Mr.Bhimrao Markad.

5. On the other hand PW 10 stated that he was the Head Constable at Outpost Bawada under the Police Station, Indapur on 9/12/2000 and while in the said police station at about 3.50 p.m. he received a telephonic call from Rambhau Mankad who informed him that the accused and Savitribai were in their house. He told Rambhau that the husband and wife being in the house is not objectionable and, therefore, Rambhau was advised to ascertain the factual position once again and communicate on telephone. Accordingly at about 4 p.m. Rambhau phoned him from Chakati and informed that the accused had committed murder of his wife Savitribai in his house and he was not opening the door of his house which was chained from the inner side. Rambhau also informed him that on account of some quarrels between the husband and wife at about 3 p.m. the accused had committed the murder of his wife. The witness, therefore, gave message to the PSI Indapur at about 4.05 p.m. and along with PC Omase went to Chakati village and he reached there at about 4.30 p.m. Rambhau met him at the village, collected about 25 persons from the village and all of them proceeded to the house of the accused, gave him a call from outside informing him that the police had come and he was required to open the door but the

accused did not open the door. Instead he opened the door slightly just to see whether the police had really come and after noticing the police party, he opened the door and came out with a sickle in his hands. Witness, therefore, shouted at the accused and asked him to drop the sickle which he did and immediately with the help of PC Omase - PW 11 the accused was taken in custody and information on phone was passed on to the police station, Indapur that the accused had committed murder of his wife Savitribai and he was taken in custody on the spot. The witness further stated that he saw the dead body of Savitribai lying inside the house and she had sustained bleeding injuries on the neck and head. The sickle had blood stains and, therefore, he directed PC Omase - PW 11 to remain on the spot while he along with Rambhau Mankad and accused went to the outpost Bawada. He proved the complaint at Exhibit 22 which was written down as per the information given by Rambhau - PW 1 and he stated that portion marked A to B in the said complaint was true and correct as per the narrations given by Rambhau himself. He also proved the occurrence report at Exhibit 23 and stated that he had forwarded the same through Police Constable Kokare to PSI Indapur for

registration of crime. By the time he returned to village Chakati he found that PSI Waghmode PW 21 had already reached there and, therefore, the investigation was handed over to PW 21. PW 21 prepared the inquest panchanama and in the mean while Deputy S.P. also visited the spot. PW 10 and PW 21 proceeded to outpost Bawada and produced the accused before PSI along with sickle. He confirmed his report at Exhibit 24 and also article no.3 sickle which was in the hand of the accused when he had opened the door of his house on command. Certain omissions were brought out by the defence during the cross-examination of this witness and more particularly regarding the information Rambhau had given him on phone regarding the quarrels between the accused and his wife and on account of that accused had committed murder of Savitribai. He reached Bawada outpost along with the accused between 5 to 5.15 p.m. and after recording the complaint of Rambhau he had reached village Chakati second time. From the house of Dnyaneshwar Fadatare he had informed the police station at Indapur on phone that the accused had committed murder of his wife Savitribai and the house of Fadtare was at a distance of 1 Km. from the house of the accused. While going

to the house of Fadatare custody of the accused was given to PC Omase. He denied a specific suggestion that the sickle was not in the hand of the accused when he opened the door of his house and that the accused was not caught on the spot.

. The evidence of PW 10 has been supported by the depositions of PW 11 Dhanaji Omase who was also a police constable attached to the outpost Bawada under the Indapur police station. He clearly stated in his examination-in-chief that on 9/12/2000 while he was on duty along with PW 10 in the afternoon there was a telephonic call from Rambhau Mankad giving him a message that the accused and his wife were inside the house and the accused was not opening the door of his house. He had handed over the telephone to PW 10 who talked to Rambhau. PW 10 informed Rambhau that accused and Savitribai were husband and wife and there was nothing objectionable. Rambhau went on insisting to visit the spot and thereafter he along with PW 10 went on motorcycle to village Chakati and reached there at about 4.30 p.m. Rambhau met them in the village. All the three along with some villagers proceeded towards the house of the accused. Front door of the house was closed. PW 10 gave a call to

the accused to open the door but after sometime he slightly opened the door and saw so as to peep through and when he noticed that the police party was present, he opened the door and came out with a sickle in his hand. PW 10 shouted at him and directed the accused to drop the sickle which he did and the sickle was lying on the ground. The accused was taken in custody by both of them and thereafter they entered the house of the accused and saw the dead body of Savitribai lying in a pool of blood. She had sustained bleeding injuries on the neck and he was directed to remain present on the spot by PW 10 who proceeded to Bawada outpost along with Rambhau M and the accused. In his cross-examination he stated that after recording the complaint of Rambhau Mankad at Bawada, PW 10 returned to the spot and at about 5.30 p.m. or so PSI Waghmode had reached the spot. He also stated that the clothes on the person of the accused were stained with blood. He denied the suggestion that due to village politics he was giving false depositions. He also denied the suggestion that there were no blood stains on the clothes of the accused. The testimony of these two witnesses was also supported by the evidence of PW 21 Waghmode, the Investigating Officer. PW 21 further

stated that on his visiting the scene of offence on 10/12/2000 he had noticed blood stains on the floor and collected soil stained with blood, a mangalsutra was lying on the spot with match box of Bristol company and an empty small bag with blood stains. All these articles were seized. He also stated that panchanama at Exhibit 40 was signed by both the panchas. On 10/12/2000 PC Shinde had produced saree, petticoat, blouse of the deceased with blood stains in the police station. Pieces of bangles and two pairs of jodve with blood stains were also seized. All these articles were sent to CA on 26/12/2000. He confirmed the office copy of the letter forwarding these articles to CA (Exh. 53). He further stated that photographer from Akshay photo studio had visited the spot and taken seven photographs in his presence. CA reports were received at Exhibits 54 to 56. PW 3 Mohan Markad after he was declared hostile, the APP had subjected him to cross-examination and he admitted that he was sarpanch of the village for five years, had studied upto 7th standard and could read and write in Marathi. He admitted his presence on the spot and that in the photograph at Article A he was seen near the dead body of Savitribai and along with the I.O. He also admitted that he was not in

the habit of signing papers without reading their contents nor was he threatened by the police for signing any panchanama. The evidence of this witness PW 3 was one more incidence of corroboration of the evidence of PW 10 and PW 11 regarding the incident and that Savitribai was lying dead in her house.

6. The CA report at Exhibit 56 clearly stated that the articles like sickle, clothes seized from the person of the accused had blood stains of blood group "B". There is no doubt that the blood group of the deceased could not be ascertained by the CA and at the same time the blood group of the accused was also not ascertained but that would not in any way impair the case of the prosecution. The learned Judge of the trial Court was right in taking support of Section 106 of the Evidence Act and more particularly when the evidence of PW 10 and PW 11 clearly stated that when they approached the house of the accused on 9/12/2000 along with Rambhau PW 1 and the other villagers, the accused was inside the house, initially he did not open the house but when he was told that the police party was present, he slightly opened the house and on noticing the police party he opened the house and came out with a sickle

in his hand. On the directions given by PW 10 orally the accused dropped the sickle from his hand and he was taken in custody there itself. He did not explain as to how his wife died. On the contrary he had taken the plea of alibi and stated that he had received a message at about 4.30 p.m. on 9/12/2000 while he was working in the farm of Bhaskar Markad that some unknown person had assaulted his wife and on reaching the house he noticed her dead and, therefore, he tried to lift during which process he had his clothes blood stained. Beyond his words there was no evidence on record. It was possible for him to examine Bhaskar Markad or the person who gave him the message at about 4.30 p.m. regarding the assault on his wife. On these obtaining circumstances the the trial Court held that it was the accused and accused alone who was the author of Savitribai's homicidal death. This conclusion has been duly supported by the evidence of the police personnel and also some of the admissions of the hostile witnesses and more particularly PW 3. We have seen the photographs on record and as stated by the Medical Officer PW 12 Savitribai had multiple injuries around her neck and on her head. The spot shows sufficient quantity of blood that had oozed out

of all these injuries by the time the police party had reached the spot. We, therefore, have no hesitation in confirming the conclusions arrived at by the trial Court which are based on proper analysis of the evidence of PW 10, PW 11, PW 12 and PW 21. Mr.Apte, the learned counsel for the accused submitted that the sickle was not sent to the finger print expert and, therefore, it could not be connected to the accused. He further submitted that the seizure of the sickle from the spot was doubtful. It is required to be noted that the sickle was seized from the spot when the accused was taken in custody by PW 10 and PW 11. The said article is not recovered consequent to the memorandum statement made by the accused while in custody of the police. The seizure of the sickle has been duly proved by the prosecution and the chemical analysis report clearly shows that the sickle was stained with human blood. In his statement under Section 313 of Cr.P.C. the accused could not explain as to how the sickle was found to be stained with human blood. In addition PW 12, the Medical Officer clearly stated that the injuries around the neck and on the head of the deceased could be caused by article like the sickle which was shown to him in the Court. Under these

circumstances, even if the I.O. failed to send the sickle to the finger print expert, the said failure has not affected the prosecution case connecting the sickle to the accused and the assaults on the person of Savitribai.

7. In the premises, this appeal fails and the same is hereby dismissed.

(R.S.MOHITE,J.) (B.H.MARLAPALLE,J.)